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DECLARATION
OF
PROTECTIVE COVENANTS AND RESTRICTIONS

LEXINGTON

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LEXINGTON

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS (“this Declaration”) is made this 19th day of January, 2006 by SANDLER AT BRENNEMAN FARM, L.L.C., a Virginia Limited Liability Company (“Developer”), [named herein as “Grantor” for purposes of recording].

RECITALS

Developer is the owner of certain real estate in the City of Virginia Beach, Virginia, on which it intends to create a planned community to be generally known as “Lexington.” In order to provide for the preservation and enhancement of property values and the maintenance and care of certain amenities within the community, Developer desires to subject the real estate described in Exhibit A, together with such additions thereto as may be made in the manner hereinafter provided, to the covenants, restrictions, easements, charges and liens hereinafter set forth, all of which are for the benefit of the community and the owners within the community.

NOW, THEREFORE, Developer hereby declares that the real estate described in Exhibit A hereto, and such additions thereto as may hereafter be made pursuant to Article II (but as to such additions, subject to any additions, deletions and modifications to the provisions of this Declaration as are made pursuant to Section 2.2), is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, as the same may be amended, modified, supplemented or restated from time to time.

ARTICLE I
DEFINITIONS

Section 1.1. "Additional Area" shall have the meaning set forth in Section 2.1 of this Declaration.

Section 1.2. "Annual Assessment" shall have the meaning set forth in Section 5.3 of this Declaration.

Section 1.3. "Articles" means the Articles of Incorporation of Lexington Owners Association, Inc., as the same may be amended from time to time.

Section 1.4. "Association" means the Lexington Owners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

Section 1.5. "Bylaws" means the Bylaws of Lexington Owners Association, Inc., as the same may be amended from time to time.

Section 1.6. "Clerk's Office" means the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia.

Section 1.7. "Common Area" means (i) real estate and/or easements specifically designated as "Common Area" or "Common Area Easement" on recorded plats of the Properties, in any Supplemental Declaration or in any amendment to this Declaration or in any other instrument executed by Developer and recorded in the Clerk's Office; (ii) the portions of the Properties, if any, designated for "open space," "buffer zones," "scenic easements," "conservation areas," "landscape easement" and "BMP" or similar purposes on recorded plats of the Properties and conveyed (by deed, plat dedication or easement) to and accepted by the Association; and (iii) all other real property easements, and improvements or facilities now or hereafter owned by the Association which are intended to be devoted to the common use and

enjoyment of the Owners. The Common Area includes or may in the future include, without limitation, entrance signs and entry features, landscaping easements, certain fencing, medians located within or adjacent to streets within the Properties, certain open space areas, one or more storm water detention ponds or "BMP's", areas set aside for pedestrian paths and other recreational facilities intended to be used by the Owners. Also, certain Parcels, may include open space areas, easements and facilities which are intended to be maintained privately either by private ownership or by separate association(s) and which will not be designated as Common Area and will not be maintained by the Association.

Section 1.8. "Communications Services" means those communications services more particularly delineated in the Communications Services Agreement.

Section 1.9. "Communication Services Agreement" means the Agreement to Obtain Communications Services of even date with this Declaration between Lexington Infrastructure Management, L.L.C., a Virginia limited liability company, and the Association, intended to be recorded in the Clerk's Office related to the management and coordination of Communications Services for the Properties, as the same may be amended from time to time.

Section 1.10. "Declaration" means this Declaration of Protective Covenants and Restrictions, as the same may from time to time be supplemented or amended.

Section 1.11. "Deed of Easement" means that certain Deed of Easement from Declarant to Lexington Infrastructure Management, L.L.C., a Virginia limited liability company, related to private easements for the exclusive provision of Communications Services for the Properties intended to be recorded in the Clerk's Office, as the same may be amended from time to time.

Section 1.12. "Developer" means Sandler at Brenneman Farm, L.L.C., a Virginia limited liability company, and its successors as "Developer" of the Properties to whom Sandler at

Brenneman Farm, L.L.C. has assigned its rights hereunder by instrument recorded in the Clerks' Office as provided in Section 8.11.

Section 1.13. "Developer Assessment" shall have the meaning set forth in Section 5.11 of the Declaration.

Section 1.14. "General Assessments" shall have the meaning set forth in Section 5.3 of the Declaration.

Section 1.15. "Governing Documents" means the Articles, the Bylaws, this Declaration and any Supplemental Declaration, as the same may be amended or supplemented from time to time.

Section 1.16. "Homeowner Agreement" shall mean the Agreement(s) by and between the Association and each Owner, as more particularly set forth in Section 2.2 of the Communications Services Agreement.

Section 1.17. "Improvement" shall mean any building, addition, patio, deck, fence, wall, animal pen or shelter, exterior lighting, sign, mailbox or mailbox support, improvement or other structure.

Section 1.18. "Lot" means any lot which is shown on a recorded subdivision plat (or, with respect to condominiums, a recorded plat of the condominium) of a Neighborhood (or any subsequently recorded subdivision plat) and on which is constructed or is to be constructed (i) a single family, detached residence; (ii) a townhouse; (iii) a zero lot line residence or other type of cluster house; or (iv) any condominium unit within a condominium created pursuant to the Condominium Act of Virginia, Section 55-79.39 et seq of the Virginia Code, as the same may be amended from time to time. The term "Lot" shall not include any portion of the Properties which at the time in question is not included in a recorded subdivision plat of a Neighborhood,

nor shall "Lot" include Common Areas, public streets or property dedicated to and accepted by a public authority.

Section 1.19. "Member" means every person or entity who holds membership in the Association.

Section 1.20. "Neighborhood" means one (1) or more Lots which are part of the same subdivision or condominium regime and are subject to the same Supplemental Declaration.

Section 1.21. "Owner" means the record holder, whether one or more persons or entities, of fee simple title to any Lot or Parcel, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.22. "Parcel" means any portion of the Properties subdivided from the residue thereof for the purpose of resubdivision into Lots or the creation of a condominium regime.

Section 1.23. "Parcel Developer" means any person or entity who purchases a Parcel for the purpose of development and sale of Lots.

Section 1.24. "Person" means any natural person, corporation, limited liability company, joint venture, partnership, association, joint stock company, trust, unincorporated organization or government or any agency or subdivision thereof or any other separate legal entity. "Person" shall also mean and include, without limitation, a property or condominium unit owners association.

Section 1.25. "Properties" means all property currently subjected to this Declaration, together with such other real property as may from time to time be subjected in whole or in part to this Declaration by Developer pursuant to Article II hereof as and when such other real property is subjected.

Section 1.26. "Supplemental Declaration" shall have the meaning set forth in Section 2.3 hereof.

Section 1.27. "Virginia Code" shall mean the Code of Virginia (1950), as in effect on the first date of recordation of this Declaration and as amended from time to time thereafter. Except as otherwise expressly permitted herein, if any sections of the Virginia Code referred to in this Declaration are hereafter repealed or recodified, each such reference shall be deemed to apply to the section of the Virginia Code that is the successor to the previous section referred to herein, or, if there is no successor section, such reference shall be interpreted as if the section had not been repealed.

Section 1.28. "Zoning Ordinance" means the ordinance adopted by the City Council of the City of Virginia Beach as may hereafter be amended, including all proffered conditions incorporated therein, pursuant to which the real estate described in Exhibit A hereto located in the City of Virginia Beach, Virginia was rezoned (the "Lexington Ordinance"), together with all other zoning ordinances, rules and regulations applicable to the Properties. If the Lexington Ordinance or any other applicable ordinances, rules and regulations in effect on the first date of recordation of this Declaration are subsequently repealed, amended or supplemented in any respect or if any variances or waivers are subsequently granted with respect thereto, the term "Zoning Ordinance" when used in interpreting or applying this Declaration at any point in time shall mean the Lexington Ordinance and such other ordinances, rules and regulations as they have been repealed, amended, supplemented, varied or waived as of such point in time.

ARTICLE II

ADDITIONS TO THE PROPERTIES

Section 2.1. Additional Area. The real estate which is subject to this Declaration as of the date of its recordation in the Clerks' Offices is described in Exhibit A hereto. Developer contemplates the possible extension of this Declaration to other real estate located within a two (2) mile radius of the real estate described in Exhibit A (the "Additional Area"). However, Developer shall not be obligated to bring all or any part of the Additional Area within the scheme of development established by this Declaration, and no negative reciprocal easement shall arise out of this Declaration so as to benefit or bind any portion of the Properties or the Additional Area until such portion of the Additional Area is expressly subjected to the provisions of this Declaration in accordance with Section 2.2 below and then such portion of the Additional Area shall be subject to any additions, deletions and modifications as are made pursuant to Section 2.2.

Section 2.2. Right to Subject Additional Area to Declaration. Developer reserves the right, at its discretion, at such time or times as it shall determine on or before May 1, 2015, to subject the Additional Area, or such portions thereof as developer shall determine, together with improvements thereon and easements, rights and appurtenances thereunto belonging or appertaining, to the provisions of this Declaration in whole or in part. Any portion of the Additional Area which is not, on or before May 1, 2015, subjected to the provisions of this Declaration in whole or in part pursuant to this Section 2.2 and thereby constituted a part of the "Properties," shall cease to be Additional Area. Each of the additions authorized pursuant to this Section 2.2 shall be made by Developer's recordation in the applicable Clerk's Office of an appropriate instrument describing the portion(s) of the Additional Area subjected to this

Declaration. If record title to the portion of the Additional Area being subjected to this Declaration is held by any Person other than Developer, then such Person shall join in and execute such instrument along with Developer. Each such instrument may contain such additions, deletions and modifications to the provisions of this Declaration as may be desired by Developer. However, no negative reciprocal easement shall arise out of any additions, deletions or modifications to this Declaration made in the instruments which subject the Additional Area to this Declaration except as to the real estate expressly subject to such additions, deletions and modifications. The foregoing notwithstanding, if Developer desires to subject all or any portion of any of the Additional Area, such action will require the approval of the Veterans Administration prior to the annexation of such Additional Area.

Section 2.3. Supplemental Declarations. In addition to subjecting the Additional Area to this Declaration as provided in Section 2.2, Declarant may, in its discretion, execute and record one or more supplemental declarations (each a "Supplemental Declaration") for the purpose of establishing certain additional or different covenants, easements and restrictions (including without limitation a different level of assessments) applicable to a specific Neighborhood or Neighborhoods or certain specified Lot(s) and/or Parcel(s). However, no negative reciprocal easement shall arise out of any Supplemental Declaration so as to bind any real property not expressly subjected thereto.

Section 2.4. Power Not Exhausted by One Exercise, Etc. No exercise of the power granted Developer hereunder as to any portion of the Additional Area shall be deemed to be an exhaustion of such power as to other portion(s) of the Additional Area not so subjected to the provisions hereof or to the provisions of a Supplemental Declaration. The discretionary right of Developer to subject the Additional Area to the provisions of this Declaration or a Supplemental

Declaration is not conditioned upon or subject to the approval of other Owners and therefore the requirements set forth in Section 8.2 for amendments to this Declaration shall be inapplicable to this Article II. The failure of Developer to extend the provisions of this Declaration to the Additional Area or any portion(s) thereof shall not be deemed to prohibit the establishment of a separate scheme of development (including provisions substantially similar or identical to those contained herein) for such portion(s) of the Additional Area to which this Declaration is not extended.

Section 2.5. Development of Additional Area. The portion(s) of the Additional Area subjected to the provisions of this Declaration may contain additional Common Areas and facilities to be owned and/or maintained by the Association.

Section 2.6. Withdrawal. Developer shall have the right, in its sole discretion, to remove from the Properties any portion thereof by recording in the applicable Clerk's Office an appropriate instrument describing the portion(s) to be removed from the Properties; provided, however, if such portion is owned by a Person other than Developer, then such withdrawal must be with the consent of such Person and Developer.

Section 2.7. Master Plan. The existence of a master plan for the Properties as part of the Zoning Ordinance or as used by Developer in developing and/or selling the Properties, and Lots and Parcels therein shall not be deemed to constitute a representation by Developer that the real estate shown thereon shall be developed as depicted on the master plan, and the master plan may be amended from time to time in the sole discretion of Developer with the consent (to the extent required) of the City of Virginia Beach, Virginia.

ARTICLE III
OWNERS ASSOCIATION

Section 3.1. Membership. Every Owner of a Lot, and every Owner of a Parcel shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot and/or Parcel. Upon the recordation of a deed to a Lot or a Parcel, the membership of the selling Owner shall cease and the purchasing Owner shall become a member of the Association.

Section 3.2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. All Owners of Lots and Parcels including Developer shall be Class A members.

Class B. Developer shall be the Class B member. The Class B membership shall terminate on the earlier of (i) the date on which Developer ceases to own twenty-five percent (25%) or more of the land (including undeveloped Lots and Parcels) lying within Lexington and the Additional Area, (ii) the date on which Developer executes and records in the Clerks' Offices an amendment to this Declaration terminating the Class B membership, or (iii) on May 1, 2015.

Section 3.3. Voting Rights.

(a) Each Class A member including Developer shall be entitled to cast one vote for each Lot and Parcel owned.

(b) Developer as the Class B member shall be entitled to cast three votes for each Lot and Parcel owned.

Section 3.4. Suspension of Voting Rights. The Board of Directors of the Association may suspend the voting rights of any Member subject to assessment under this Declaration

during the period when any such assessment shall be delinquent, but upon payment of such assessment the voting rights of such Member shall automatically be restored.

Section 3.5. Articles and Bylaws to Govern; Property Owners' Association Act. Except to the extent expressly provided in this Declaration, all the rights, powers and duties of the Association and the Members, including the Members' voting rights, shall be governed by the Articles and the Bylaws. The Articles provide, among other things, that the Class B member shall appoint the members of the Board of Directors until the Class B membership terminates. However, in the event of any conflict or inconsistency between the provisions of this Declaration or any Supplemental Declaration and the provisions of the Articles or Bylaws, this Declaration and all Supplemental Declarations (to the extent applicable) shall control. In addition to all of the rights, powers and duties of the Association provided in this Declaration, the Association shall have all of the rights, powers and duties provided in the Property Owners' Association Act, Section 55-508 et seq of the Virginia Code, as the same may be amended from time to time.

Section 3.6. Neighborhoods. The Lots within a particular Neighborhood or within a particular grouping of Lots subject to its own Supplemental Declaration may be subject to additional covenants other than as set forth in this Declaration (including any Supplemental Declaration), and the Owner of a Lot may be a member of another owners association or condominium unit owners association in addition to the Association. As of the date of the recordation of this Declaration, the Developer contemplates that each Neighborhood will have a separate condominium unit owners association in addition to the Association, and therefore, the Owner of a Lot will be a member of the Association and the applicable condominium unit owners association, if any has been formed with respect to the Neighborhood in which the Lot is located.

ARTICLE IV

COMMON AREA

Section 4.1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the maintenance, management, operation and control, for the benefit of the Members, of the Common Area conveyed, reserved or dedicated to or for the benefit of the Association and all improvements thereon (including fixtures, personal property and equipment related thereto) and shall keep the Common Area and the improvements thereon in accordance with the requirements of the Zoning Ordinance, this Declaration and any applicable Supplemental Declaration, and the Association shall keep the same in good, clean and attractive condition, order and repair.

The Association shall be responsible for the management, control and maintenance of all street intersection signs (to the extent not maintained by the City of Virginia Beach), direction signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, fencing, wood or masonry wall features and/or related landscaping and pedestrian paths erected, installed or planted in the Common Areas by the Developer or the Association, for the benefit of the Members or the Association; provided such items are not maintained by the applicable municipality or the Virginia Department of Transportation at its expense and are located within Common Areas.

The Association shall be responsible for the maintenance, repair and replacement of the Entrance Landscaping and the maintenance of the Open Space as further described in the Declaration and Deed of Easements and Covenants recorded in the Clerk's Office as Instrument Number 200409020140516 ("Declaration of CH&B").

Section 4.2. Owners' Rights of Enjoyment and Use of Common Areas. Subject to the provisions of this Declaration, any applicable Supplemental Declaration and the Articles and Bylaws, every Owner shall have a right of enjoyment in and to the Common Areas which right of enjoyment shall be appurtenant to and shall pass with the title to every Lot and Parcel. The Common Areas shall be used by Owners only for the purpose or purposes for which the Common Areas may have been improved by Developer, the Parcel Developer or the Association and subject to any applicable restrictions in the Zoning Ordinance. Any Common Area which has not been improved for a particular use is intended to remain in its natural condition until so improved, and any use thereof by an Owner shall not damage or disturb such natural condition or the enjoyment thereof by other Owners.

Section 4.3. General Limitations on Owners' Rights. The Owners' rights of enjoyment in the Common Areas, shall be subject to the following:

(a) the right of the Association to establish reasonable rules and regulations and to charge reasonable admission and other fees for the use of the Common Areas;

(b) subject to the limitation imposed by the last sentence of Section 55-514C of the Virginia Code as in effect on the date hereof, the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for the period during which any assessment against his Lot or Parcel is delinquent;

(c) the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for any period during which any other violation by the Owner of this Declaration, a Supplemental Declaration or the rules promulgated by the Association pursuant to this Declaration remains uncorrected after the last day of a period established for correction by the Association (such period to be stated in a notice to the Owner

together with a statement of the violation complained of and the manner of its correction) and for not more than sixty (60) days after such correction;

(d) subject to the Bylaws, the right of the Association to mortgage any or all of the Common Areas for the purpose of making improvements or repairs thereto;

(e) subject to the Bylaws, the right of Developer or the Association to grant utility easements across the Common Areas as provided in Section 7.1;

(f) subject to the Bylaws, the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association;

(g) to the extent applicable, subject to the terms and provisions of the Communications Services Agreement and the Deed of Easement; and

(h) all of the other easements, covenants and restrictions provided for in this Declaration and any Supplemental Declaration(s) applicable to the Common Areas.

Section 4.4. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to members of his family living on his Lot and to his guests, and he may transfer such right to his tenants, subject to such rules and regulations and fees as may be established from time to time by the Association.

Section 4.5. Damage or Destruction of Common Area by Owner. In the event any Common Area or improvement thereon is damaged or destroyed by an Owner, his tenants, guests, licensees, agents or members of his family, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the area or improvement involved, or as the Common Area or improvement may have been theretofore modified or

altered by the Association, in the discretion of the Association. The cost of such repairs shall become a special assessment on the Lot of such Owner and shall constitute a lien on such Owner's Lot and be collectible in the same manner as other assessments set forth herein.

Section 4.6. Rights in Common Areas Reserved by Developer and/or a Parcel Developer.

Until such time as Developer or a Parcel Developer conveys a parcel of real estate constituting Common Area as the case may be, to the Association, Developer or the Parcel Developer, as the case may be, shall have the right as to that parcel, but not the obligation, (i) to construct such improvements thereon as it deems appropriate for the common use and enjoyment of Owners, and (ii) to use the Common Area for other purposes not inconsistent with the provisions of this Declaration. Until such time as Developer or a Parcel Developer conveys a parcel of real estate constituting Common Area as the case may be, to the Association, Developer or the Parcel Developer, as the case may be, shall maintain such Common Area in neat condition and repair, including mowing and removing underbrush and weeds.

Section 4.7. Title to Common Area. Developer or a Parcel Developer may retain legal title to the Common Areas as the case may be, or portions thereof, but notwithstanding any provision herein to the contrary, Developer or the Parcel Developer shall convey each Common Area to the Association, in a condition acceptable to the Association, free and clear of all liens but subject to this Declaration and all other easements, conditions and restrictions of record at such time as such improvements are completed and in a condition acceptable to the Association. Regardless of whether the Common Areas actually have been conveyed by the Developer or the Parcel Developer, as the case may be, Owners and the Association shall have all the rights and obligations imposed by this Declaration, any Supplemental Declaration, the Articles and Bylaws with respect to the Common Areas from and after the date such Common Areas are designated as

such by recordation of an appropriate instrument in the Clerk's Office. The Association shall be liable from the date a deed or deeds to such Common Area is/are recorded in the Clerk's Office for payment of taxes, insurance and maintenance costs with respect thereto. Until the Common Areas are conveyed to the Association, Developer or the Parcel Developer, as the case may be, shall be liable for payment of taxes, insurance and maintenance costs with respect thereto.

Section 4.8. Veterans Administration Approval. So long as the Class B Membership exists, Developer shall not do the following without the prior written approval of the Veterans Administration: (i) annex any Additional Area, (ii) mortgage any Common Areas, (iii) dedicate any Common Areas to general public use, or (iv) consolidate, merge or dissolve the Association.

Section 4.9. Reservation of Rights Regarding Common Area. Certain of the open space, conservation areas, and historic resources may be better suited for ownership by a private, nonprofit organization among whose purposes is the conservation of open space land and/or natural or historic resources. Notwithstanding anything in this Declaration to the contrary, and regardless of whether such areas have previously been designated as Common Areas, Developer reserves for itself, and its successors and assigns, the right, for so long as Developer has the right to add Additional Area to the Properties pursuant to Section 2.2 hereof, to transfer and convey in fee simple such open space, conservation areas, and historic resources as Developer deems in the best interests of such areas to one or more private, nonprofit organizations. Any transfer and conveyance shall comply with the specific criteria set forth in the Zoning Ordinance.

ARTICLE V

ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Assessments. Developer, for each Lot and Parcel owned within the Properties, hereby covenants (subject to Sections 5.5,

5.8, 5.9 and 5.11), and each Owner of any Lot or Parcel, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association assessments as set forth in this Declaration, any Supplemental Declaration and in the Bylaws. The assessments, together with interest thereon, late charges and costs of collection including attorneys' fees, shall be a continuing lien upon the Lot or Parcel against which each such assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the Owner of the Lot or Parcel at the time the assessment fell due. No Owner may waive or otherwise avoid liability for the assessments provided herein by nonuse of the Common Areas or abandonment of his Lot or Parcel. Each assessment that is not paid when due shall bear interest at the rate established by the Association, which rate shall not exceed the maximum rate permitted by applicable law. Each assessment that is not paid within ten (10) days of its due date shall, at the option of the Association, incur a late charge in the amount of thirty dollars (\$30.00) or as may be otherwise established from time to time by resolution duly adopted by the Board of Directors of the Association.

Section 5.2. Purpose of Assessments. The assessments levied by the Association shall be used for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Areas and improvements thereon and other property owned or acquired by the Association of whatsoever nature, for the discharge of all taxes and other levies and assessments against the Common Areas and improvements thereon and other property owned or acquired by the Association, for the procurement of insurance by the Association in accordance with the Bylaws, for the establishment of reserves with respect to the Association's obligations, for the discharge of such other obligations as may be imposed upon or assumed by the Association pursuant to its Articles, Bylaws, this Declaration, any Supplemental Declaration,

the Declaration of CH&B, the Communications Services Agreement, the Deed of Easement or the Proffers, hereinafter defined, and for such other purposes as may be authorized by or pursuant to the Articles or Bylaws. Without limiting the generality of the foregoing sentence, the assessments levied by the Association shall include amounts sufficient to fulfill the Association's obligations under the Communications Services Agreement.

Section 5.3. Annual Assessments. "Annual Assessments" shall mean "General Assessments."

(a) General Assessments.

1. Purpose. "General Assessments" shall mean those assessments used for the general purposes set forth in Section 5.2.

2. Basis. The General Assessments shall be established and increased or decreased from time to time by the Board of Directors of the Association pursuant to the Bylaws.

Section 5.4. Special Assessments. In addition to the General Assessments, the Board of Directors of the Association may levy a periodic special assessment if the purpose in doing so is found by the Board of Directors to be in the best interest of the Association and the proceeds of such assessment are used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area, or for otherwise fulfilling obligations of the Association.

Section 5.5. Date of Commencement of Annual Assessments. Subject to Section 5.9, the Annual Assessments provided for herein shall commence as to each Lot or Parcel on the first day following the recordation of the deed to such Lot or Parcel to an Owner, other than the Developer or a Parcel Developer, who purchases the same. The first Annual Assessment on a Lot or Parcel shall be adjusted according to the number of days remaining in the calendar month

in which the recordation of the deed to such Owner occurs and the number of months remaining in the calendar year. Unless the Board of Directors of the Association amends the Bylaws to provide otherwise, the Annual Assessments shall be paid in equal monthly installments as provided in the Bylaws.

Section 5.6. Effect of Nonpayment of Assessments; Remedies of Association. The lien of the assessments provided for in this Declaration may be perfected and enforced in the manner provided in Section 55-516 of the Virginia Code. A statement from the Association showing the balance due on any assessment shall be prima facie proof of the current assessment balance and the delinquency, if any, due on a particular Lot or Parcel. The Association may also bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure, and interest, late charges and costs of collection including attorney's fees shall be added to the amount of such assessment and secured by the assessment lien. Without limiting the foregoing remedies of the Association, the Association shall also have such remedies as specified in the Communications Services Agreement, including, but not limited to, requesting Lexington Infrastructure Management, L.L.C. or its subcontractor to suspend the "Basic Services" (as defined in the Communications Services Agreement) to the delinquent Owner's Lot or Parcel.

Section 5.7. Subordination of Lien to Mortgages. The lien upon each of the Lots and Parcels securing the payment of the assessments shall have the priority set forth in Section 55-516A of the Virginia Code.

Section 5.8. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments and liens created herein: (i) any property used as a sales or leasing center, model, maintenance center or management facility by Developer or for similar

purposes; (ii) all properties dedicated and accepted by a public authority; (iii) all Common Areas; and (iv) all properties wholly exempt from real estate taxation by state or local governments upon the terms and to the extent of such legal exemption; and (v) all Lots and Parcels owned by the Developer and/or any Parcel Developer.

Section 5.9. Annual Budget. The Board of Directors shall adopt an annual budget for each fiscal year, which budget shall provide for the annual level of assessments (including provision for reserves and physical damage insurance deductibles) and an allocation of expenses. There shall be no responsibility for the payment of assessments until after the Board of Directors adopts its initial annual budget.

Section 5.10. Capitalization of Association. Upon the acquisition of record title to a Lot by the first purchaser thereof (other than Developer, the Parcel Developer or an owner who purchases solely for the purpose of constructing a dwelling thereon for resale), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount equal to one-quarter of the amount of the Annual Assessment payable on such Lot for that year. This amount shall be paid to the Association at settlement for its reserves.

Section 5.11. Loans by Developer. The Developer shall have the option, but not the obligation, to loan money to the Association on such terms and at such rates as are commercially reasonable to enable the Association to comply with its obligations under this Declaration. Such loan or loans may be in lieu of, or in addition to, loans obtained by the Association from other parties. Any such loan shall be represented and secured by one or more promissory notes of the Association and shall be listed and disclosed as "Loans from Developer" on all annual budgets and year-end financial statements of the Association.

ARTICLE VI
USE OF PROPERTY

Section 6.1. Protective Covenants.

- (a) Nuisances. No nuisance shall be permitted to exist on any Lot or Parcel. Noxious, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, shall not be conducted on any Lot or Parcel or on the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot or Parcel which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules in furtherance of this provision.
- (b) Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit the vacating of boundaries between adjacent Lots to create a bigger Lot, deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments and provided that this shall not prohibit the division or combination of condominium units in accordance with law, or the creation of condominiums. If boundaries are vacated between lots, or if one or more condominium units are combined to form a larger unit, the Owner of the resulting bigger lot (or unit) shall be obligated to pay assessments hereunder as if the boundary had not been vacated or the condominium unit had not been combined.
- (c) Rules. From time to time the Board of Directors may adopt general rules, including but not limited to rules to regulate potential problems relating to the use of Properties

and the well-being of Members, such as the definition of nuisances, keeping of animals, storage and use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, satellite dishes, signs, trash and trash containers, restrictions on sprinkler and irrigation systems, private irrigation wells and uses of lakes, water bodies and wetlands, maintenance and removal of vegetation on the Properties and the type and manner of application of fertilizers or other chemical treatments to the Properties in accord with non-point source pollution control standards (collectively, the "Rules"). All such Rules and any subsequent amendments thereto shall be binding on all Members and occupants of the Properties, including their tenants, guests and invitees, except where expressly provided otherwise in such Rules. Such Rules as adopted from time to time are herein incorporated by reference and shall be as binding as if set forth herein in full; provided, however, that in the event of a conflict between any provision(s) in the Rules and the Governing Documents, the provision(s) set forth in the Governing Documents shall control.

(d) Exceptions. In certain special circumstances, the Board of Directors may issue variances exempting a particular Lot or Parcel from any of the provisions of this Article VI.

(e) Irrigation. Subject to the rights retained by Developer in Section 7.7, no sprinkler or irrigation system of any type which draws upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties without the written approval of Developer, except that the Association shall have the right to draw upon water from such water bodies for irrigation of the Common Area. Provided, however, this paragraph shall not apply to the Developer, and may not be amended without Developer's written consent so long as Developer has the right to add property in accordance with Article II.

(f) Lakes and Water Bodies. There shall be no swimming, use of personal flotation devices, boating or fishing in any lakes or ponds located within the Properties. This paragraph shall not apply to prohibit any use by Developer specifically authorized under this Declaration. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other water bodies within the Properties.

(g) Permitted Uses. Except as otherwise provided in the Governing Documents (including without limitation any applicable Supplemental Declaration), no Lot shall be used for other than residential purposes except as designated by the Developer or as set forth below. Nothing in the Governing Documents shall be construed to prohibit the Developer or its designees from using any Lot owned by the Developer (or any other Lot with the permission of the Owner thereof) or any portion of the Common Area for promotional, marketing, display or customer service purposes (such as a visitors' center) or for the settlement of sales of Lots. Further, the Developer specifically reserves the right to operate a construction office or a rental, brokerage and management office at any time on Lots owned or leased by the Developer (or any other Lot with the permission of the Owner thereof) and on any portion of the Common Area to the extent permitted by law. The Developer may assign its rights under this section to or share such rights with one or more other persons, exclusively, simultaneously or consecutively with respect to the Common Area and Lots owned or leased by the Developer or such persons.

(h) Hazardous Uses; Waste. Nothing shall be done or kept on the Properties which will increase the rate of insurance applicable for permitted uses for the Common Area or any part thereof without the prior written consent of the Board of Directors, including, without limitation, any activities which are unsafe or hazardous with respect to any person or property.

No person shall permit anything to be done or kept on the Properties which will result in the cancellation of any insurance on the Common Area or any part thereof or which would be in violation of any law, regulation or administrative ruling. No vehicle of any size which transports inflammatory or explosive cargo may be kept or driven on the Properties at any time. Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, toxic wastes and other environmental contaminants (collectively, the "Hazardous Materials"). No Owner shall knowingly use, generate, manufacture, store, release, dispose of or knowingly permit to exist in, on, under or about such Owner's Lot, the Common Area or any portion of the Properties, or transport to or from any portion of the Properties any Hazardous Materials except in compliance with the Environmental Laws. No waste shall be committed on the Common Area.

(i) Lawful Use. No improper, offensive or unlawful use shall be made of the Properties or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Properties shall be complied with, by and at the sole expense of the Owner, the Association, the Developer or any owners association or condominium unit owners association, whichever shall have the obligation for the upkeep of such portion of the Properties, and, if the Association, then the cost of such compliance shall be included in the General Assessment, as appropriate.

(j) Obstructions. No person shall obstruct any of the Common Area or otherwise impede the rightful access of any other person on any portion of the Properties upon which such person has the right to enter. No person shall place or cause or permit anything to be placed on or in any of the Common Area without the approval of the Board of Directors of the Association. Nothing shall be altered or constructed in or removed from the Common Area except with the proper written approval of the Board of Directors.

(k) Association Property. The Common Area shall be used only for the furnishing of the services and facilities for which the same is reasonably suited and which are incident to the use and occupancy of the Lots. The improvements located on the Common Area shall be used only for their intended purposes. Except as otherwise expressly provided in the Governing Documents, no Owner shall make any private, exclusive or proprietary use of any of the Common Area without the prior written approval of the Board of Directors and then only on a temporary basis.

(l) Signs. Except for such signs as may be posted by the Developer for promotional or marketing purposes or by the Association, no signs of any character shall be erected, posted or displayed in the Common Area.

(m) Landscaping; Sight-lines. No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public or private streets. Pavement, plantings and other landscape materials shall not be placed or permitted to remain upon any Lot: (i) if such materials may damage or interfere with any easement for the installation or maintenance of utilities; (ii) in violation of the requirements of such easements; (iii) unless in conformity with public utility standards; or (iv) if such materials may unreasonably change, obstruct or retard direction or flow of any drainage channels. No

water pipe, sewer pipe, gas pipe, drainage pipe, television cable, electrical wire, or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground.

(n) Vehicles. Except in connection with construction activities, no trucks, commercial vehicles, trailers, campers, recreational vehicles, boats or other large vehicles, including grounds maintenance equipment, may be parked on any Lot or any portion of the Common Area. No junk or derelict vehicle or other vehicle on which current registration plates and current city and state inspection permits are not displayed shall be kept upon any Lot or any portion of the Common Area. All motor vehicles including, but not limited to, trail bikes, motorcycles, dune buggies, and snowmobiles shall be driven only upon paved streets and parking lots. No motor vehicles shall be driven on community trails, pathways or unpaved portions of the Common Area except such vehicles as are authorized by the Board of Directors as needed to maintain, repair, or improve the Common Area.

(o) Animals. The maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited on any Lot or upon the Common Area except that the keeping of two (2) guide animals and orderly domestic pets (e.g., dogs, cats or caged birds) without the approval of the Board of Directors, is permitted, subject to the Rules; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and that any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Properties upon ten (10) days written notice from the Board of Directors. Pets shall not be permitted upon the Common Area unless accompanied by someone who can control the pet and unless carried or leashed. Pet droppings shall be removed by the Owner of the pet. Any Owner who keeps or maintains any pet upon any portion of the Properties agrees to indemnify and hold the Association, each Owner and the

Developer free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Properties. All pets shall be registered and inoculated as required by law.

(p) Leasing. No dwelling unit located on a Lot or any portion thereof shall be used or occupied for transient or hotel purposes or in any event leased for an initial period of less than twelve (12) months. No portion of any dwelling unit (other than the entire dwelling unit) shall be leased for any period. No Owner shall lease a dwelling unit on a Lot or any portion thereof other than on a written form of lease: (i) requiring the lessee to comply with the Governing Documents and the Rules; and (ii) providing that failure to comply with such documents constitutes a default under the lease. The governing documents for any additional association, such as a condominium unit owners association, if one has been formed, for the Neighborhood in which the Lot is located, may contain additional restrictions and/or limitations regarding an Owner's right to lease such Owner's Lot, including, but not limited to, restrictions regarding the number of dwelling units on Lots which may be leased or rented at any given time.

(q) Communications Equipment. No use of any Lot or Parcel shall be made which interferes with the easements, equipment, lines, cables, facilities, structures, and/or appurtenances relating to the provision of the Communications Services. Further, no use shall be made of any Lot or Parcel which is inconsistent with or contravenes the provisions of the easements set forth in the Deed of Easement.

Section 6.2. Maintenance of Property. To the extent that exterior maintenance is not provided for in a Supplemental Declaration or by a separate association or condominium unit owners association, each Owner shall keep all Lots and Parcels owned by him, and all improvements therein or thereon, in good order and repair, free of debris, all in a manner and with such frequency as is acceptable to the Association and consistent with a first-quality development, and in accordance with any Rules adopted by the Association.

Section 6.3. Sales by Parcel Developers and Resales of Lots by Owners Other Than Developer. Upon the acquisition of record title to a Lot from either (i) a Parcel Developer or (ii) an owner other than Developer, an administrative fee in an amount set from time to time by the Board of Directors, which amount shall initially be \$75.00, shall be paid to the Association by or on behalf of the purchaser of the Lot. Such administrative fee shall be paid to the Association at settlement. In addition, all Owners shall sign and deliver to the Association, the Homeowner Agreement relating to Communications Services on or before settlement of such Owner's purchase of a Lot or acquisition of record title to a Lot, whichever first occurs.

Section 6.4. Security. Neither the Association, nor Developer shall be held liable for any loss or damage by reason of failure to provide security or ineffectiveness of security measures undertaken. All Owners, tenants, guests, and invitees of any Owner, as applicable, acknowledge that the Association and Developer, and committees established by any of the foregoing entities, are not insurers and that each Owner, tenant, guest, and invitee assumes all risk or loss or damage to persons, to structures or other improvements situated on Lots and Parcels, and to the contents of any Improvements situated on Lots and Parcels and further acknowledge that Developer has made no representations or warranties, nor has any Owner, tenant, guest, or invitee relied upon any representations or warranties, expressed or implied, including any

warranty or merchantability or fitness for any particular purpose relative to any security measures recommended or undertaken.

ARTICLE VII

EASEMENTS AND OTHER RESTRICTIONS

Section 7.1. Utility Easements. Developer reserves perpetual easements, rights and privileges to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, pumping stations, siltation basins, tanks and other facilities, systems and equipment for the conveyance and use of electricity, telephone service, sanitary and storm sewer, water, gas, cable television, drainage and other public conveniences or utilities, upon, in or over those portions of the Properties (including Lots, Parcels and Common Areas) as Developer, its successors or assigns may consider to be reasonably necessary (the "Utility Easements"). The Utility Easements shall include the right to cut trees, bushes or shrubbery and such other rights as Developer or the applicable governmental authority or utility company providing the utilities may require. The utility lines installed pursuant to the Utility Easements may be installed above or below ground, except as otherwise provided in any Supplemental Declaration. Developer shall have the right to convey Utility Easements to other Owners, to Parcel Developers, to governmental authorities or utility companies, to the Association and to any other party or parties. Without limiting the generality of the foregoing, Developer has granted to Lexington Infrastructure Management, L.L.C. those certain easements more particularly set forth in the Deed of Easement, which easements include without limitation the right of Lexington Infrastructure Management, L.L.C. to modify, relocate, install, move and/or create new easements under certain conditions.

Section 7.2. Erosion Control. Developer reserves a perpetual easement, right and privilege to enter upon any Lot, Parcel, or Common Area, and the Association is granted a perpetual easement, right and privilege to enter upon any Lot or Parcel, either before or after a building has been constructed thereon or during such construction, for the purpose of taking such erosion control measures as Developer or the Association deems necessary to prevent or correct soil erosion or siltation thereon; provided, however, that Developer or the Association shall not exercise such right unless it has given the Owner of the Lot or Parcel or the Association (as to the Common Area) at least ten days' prior notice thereof and the Owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the erosion or siltation problem. The cost incurred by the Association or by Developer in undertaking such erosion control measures on any Lot or Parcel shall become a special assessment on such Lot or Parcel and shall constitute a lien against such Lot or Parcel and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots or Parcels owned by Developer.

Section 7.3. Maintenance of Lots and Parcels. Developer reserves the perpetual easement, right and privilege, and the Association is granted the perpetual easement, right and privilege, to enter on any Lot or Parcel, after at least five days' notice to the Owner thereof, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides and fertilizer and grass seed, removing trash and taking such other action as the Developer or the Association may consider necessary to correct any condition which detracts from the overall beauty of the Properties or which may constitute a hazard or nuisance. The cost incurred by the Association in taking such action (including any overhead costs associated therewith) shall constitute a special assessment on the

Lot or Parcel and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots or Parcels owned by Developer.

Section 7.4. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplemental Declaration, so long as Developer is engaged in developing or improving any portion of the Properties or the Additional Area, Developer shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for (i) movement and storage of building materials and equipment, (ii) erection and maintenance of directional and promotional signs and (iii) conduct of sales activities, including maintenance of model residences.

Section 7.5. Right of Entry for Governmental Personnel. A right of entry on any Common Area is hereby granted to personnel of the City of Virginia Beach in the lawful performance of their official duties, including but not limited to: law enforcement officers and fire and rescue personnel as needed to lawfully carry out their duties, including but not limited to enforcement of cleared emergency vehicle access; public utility and public works vehicles in the performance of their installation, maintenance and repair duties; and inspections personnel for the purpose of reviewing the Association's proper maintenance of the Common Area.

Section 7.6. Easement for Landscaping, Signs and Related Purposes. There shall be and is hereby reserved to Developer for so long as it retains its rights as Developer and to the Association, a non-exclusive easement over all Lots, Parcels and Common Area for a distance of twenty (20) feet behind any Lot or Parcel line which parallels, and is adjacent to, a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping.

Section 7.7. Easement for Use of Water Bodies and Irrigation. There is hereby reserved by the Developer a perpetual easement and right to use all lakes, ponds, creeks or water bodies lying within the Common Area for the purposes of irrigation of other parcels now, or in the future, owned by Developer or third parties.

Developer further retains: (i) the right to lay, install, construct and maintain an irrigation system, including underground irrigation lines, over all Common Areas or landscaping easement areas granted to the Association for the purpose of providing irrigation to other parcels which may or may not be a part of the Properties, and (ii) the right to enter onto the Common Area and to maintain the lakes, ponds, creeks or water bodies as may be necessary to insure that all such water bodies continue to provide a sufficient source of water to satisfy the irrigation needs described in this section. Nothing described in this section shall impose any obligation on Developer to maintain the lakes, ponds, creeks or water bodies, such obligation being the obligation of the Association.

Section 7.8. Easement for Encroachment. Each Lot, each Parcel and the Common Areas are hereby declared to have an easement over all adjoining Lots, all adjoining Parcels and the Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a structure on any Lot or Parcel is partially or

totally destroyed, and then repaired or rebuilt, the Owners of each Lot or Parcel agree that minor unintentional encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 7.9. Easements to Serve Additional Area. The Developer hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Developer agrees that it and its successors and assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Developer further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Developer, its successors and assigns shall enter into a reasonable easement agreement with the Association to share the cost of maintenance of any access roadway serving such property.

Section 7.10. Miscellaneous Easements, Encumbrances and Restrictions. To the extent not otherwise duly amended, modified or released by instruments of record in the Clerk's Office, the following easements, encumbrances and restrictions, in addition to the easements, encumbrances and restrictions imposed by this Declaration, affect the Properties, or portions thereof, as more particularly described in the various instruments referenced:

The Developer hereby reserves a Landscape Maintenance Easement to the Owner of Parcel 6 as further described in the Declaration of CH&B.

The Properties are subject to all the terms, conditions and restrictions stated in the Declaration and Deed of Easement dated August, 2004 and recorded in the Clerk's Office as Instrument Number 200408300137566.

The Properties are subject to all the terms, conditions and restrictions stated in the Declaration of CH&B and in the Proffers contained in an Agreement dated July 24, 2003 and recorded in the Clerk's Office as Instrument Number 200310290176399 (the "Proffers").

The Properties are subject to all the terms, conditions and restrictions stated in the Deed of Easement between Developer and CH&B Associates, L.L.P., a Virginia limited partnership ("CH&B") dated August 30, 2004 and recorded in the Clerk's Office as Instrument Number 200409020140515.

The Properties are subject to all the terms, conditions and restrictions stated in the Agreement between CH&B and the City of Virginia Beach dated July 24, 2003 and recorded in the Clerk's Office as Instrument Number 200310290176399.

The Properties are subject to all the terms, conditions and restrictions stated in the Dedication of Right-of-Way and Subdivision Agreement dated August 11, 2004 and recorded in the Clerk's Office as Instrument Number 200408300137567.

The Properties are subject to all the terms, conditions and restrictions stated in the Amended and Restated Deed of Public Easements dated February 29, 2000 and recorded in the Clerk's Office in Deed Book 4224, page 174 ("Deed of Public Easements"), which imposes additional obligations on the Association as more particularly described in the Deed of Public Easements.

The Properties are subject to the Deed of Easement (as defined in Section 1.11 of this Declaration), and Developer contemplates recording the Communications Services Agreement in the Clerk's Office immediately following the recordation of this Declaration.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.1. Duration. The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by Owners of a majority of the Lots and Parcels. Notwithstanding the foregoing, the provisions of Section 4.2, Article VII, Section 7.5 and Section 8.9 shall be perpetual.

Section 8.2. Amendments. Except as otherwise set forth in this Declaration and subject to Section 10.4 of the Bylaws, this Declaration may be amended either (i) by Developer without the consent of any other Owners in order to correct typographical errors, inconsistent references, scrivener's errors, grammatical mistakes, and incorrect or ambiguous punctuation, for so long as Developer's Class B membership continues or (ii) by a vote of two-thirds of the sum of: (A) the Class A votes (including Developer as to Class A votes held by Developer), plus (B) the Class B votes (if any). Notwithstanding the foregoing, the provisions of Articles II and VIII and Sections 3.2, 4.7, 5.8, this Section 8.2 and any provisions relating to the Communications Services may not be amended in any event without the written consent of Developer regardless of whether the Class B membership has terminated; the provisions of Section 7.5 and Section 8.9 may not be amended without the consent of the City Council of the City of Virginia Beach. In addition,

Developer shall have the right without the consent of any other Owners to amend this Declaration in any respect as may be necessary or appropriate in order for this Declaration or the Properties to comply with applicable laws now or hereafter enacted or to satisfy the requirements of any Federal Mortgage Agency, including, without limitation, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the U.S. Development of Housing and Urban Development, as the same may be amended from time to time, with respect to their purchase or guaranty of mortgage loans secured by Lots.

Section 8.3. Enforcement. Developer, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any Supplemental Declaration. Without limiting the generality of the foregoing, if any Owner fails to comply with any of the provisions of this Declaration or any Supplemental Declaration and such failure continues for at least five (5) days after notice thereof is given to the Owner, then either Developer or the Association may, but without any obligation to do so, take such action as either of them considers necessary or appropriate (including, without limitation, entering the Owner's Lot or Parcel) to correct the noncompliance; provided, however, that judicial proceedings are instituted before any Improvements are subsequently altered or demolished. The cost incurred in taking such action shall constitute a special assessment upon the Owner's Lot(s) and/or Parcel(s) and shall be collectible in the manner provided herein for the payment of assessments. Failure by the Developer, the Association or any Owner to enforce any provision of this Declaration or any Supplemental Declaration shall in no event be deemed a waiver of the right to do so thereafter. In addition to the foregoing, the City of Virginia Beach has certain enforcement rights as set forth in Section 8.9 below.

Section 8.4. Limitations. As long as the Developer has an interest in developing the Properties, any commercial property adjacent to the Properties and/or the Additional Area, the Association may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intent of this Declaration. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

Section 8.5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 8.6. Conflict. In the event of conflict among the Governing Documents, this Declaration shall control, then applicable Supplemental Declarations, then the Articles, then the Bylaws except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 8.7. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 8.8. Use of the Words "Lexington" or "Lexington Owners Association." No person or entity shall use the words "Lexington" or "Lexington Owners Association" or any derivative thereof in any printed or promotional material without the prior written consent of Developer.

Section 8.9. Rights of the City of Virginia Beach, Virginia.

(a) Failure of Association to Maintain Common Areas. In the event the Association, or any successor organization, shall at any time after establishment of the development fail to maintain the Common Areas or any improvements thereon in reasonable order and condition in accordance with the approved plans, the City of Virginia Beach, Virginia (the "City"), acting through its Planning Director, may serve notice in writing upon the Association and upon the Owners within the development setting forth the manner in which the Association has failed to maintain the Common Area and/or improvements in reasonable condition, and such notice shall contain a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the date and place of a public hearing before the City's Planning Commission which shall be held within fourteen (14) days after the notice.

1. At such hearing the City's Planning Commission may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.

2. If the deficiencies set forth in the original notice or in the modifications thereof shall not be remedied within such thirty (30) days or any approved extension thereof, the City, in order to preserve the taxable values of the properties within the development and to prevent the Common Areas and/or improvements from becoming a public nuisance, may, subject to budgetary limitations, enter upon such Common Areas and maintain, repair and/or replace, (herein referred to collectively as "maintenance") or contract for the maintenance of, the same for an initial period not to exceed one (1) year.

3. Such entry and maintenance shall not vest in the general public any rights to use the Common Areas except when the same is/are voluntarily dedicated to the public by the Owners.

4. Before the expiration of such one (1) year period, the City shall, upon its initiative or upon the request of the Association, call a public hearing before the City's Planning Commission upon two (2) weeks' notice in writing to the Association and to the Owners within such development, at which hearing the abilities of the Association to resume maintenance responsibilities shall be assessed by the City's Planning Commission.

5. If the City's Planning Commission shall determine that the Association is ready and able to maintain the Common Areas in reasonable condition, the City shall cease to maintain the Common Areas.

6. If the City's Planning Commission shall determine that the Association is not ready and able to maintain the Common Areas in a reasonable condition, the City may, in its discretion, continue to maintain or contract for the maintenance of, the Common Areas.

7. The cost of such maintenance by the City and all associated administrative costs incurred by the City shall be assessed ratably against the properties within the development that have a right of enjoyment of the Common Areas, and shall become a charge on such properties, and may be collected by the City as taxes and levies are collected.

(b) The City and its duly authorized representatives shall have the right, upon reasonable notice and during the Association's business hours, to review the Association's financial and related records at the offices of the Association for the purpose of ensuring the

Association's solvency and capacity to maintain the Common Areas and any improvements located thereon.

1. Any decision made by the Planning Commission under this subsection may be appealed by an aggrieved party to the Virginia Beach City Council. Such appeal shall be made in writing to the City Clerk within ten (10) days of the Planning Commission's decision.

Section 8.10. Approvals and Consents. All approvals and consents required or permitted by this Declaration (other than approvals or consents given by Members in a vote conducted in accordance with the Bylaws) shall be in writing, shall be signed by the party from whom the consent or approval is sought and, unless otherwise provided herein, may be withheld by such party in its sole discretion.

Section 8.11. Assignment of Developer's Rights. Any and all rights, powers, easements and reservations of Developer set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner, to a Parcel Developer or to any other party in Developer's sole discretion. Each such assignment shall be evidenced by an instrument which shall be signed by Developer and its assignee and recorded in the Clerk's Office.

Section 8.12. Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of Developer, the Association and (subject to Article II hereof) the Owners and their respective heirs, legal representatives, successors and assigns.

Section 8.13. Compliance with Property Owners' Association Act. The Association shall be subject to and comply with the Virginia Property Owners' Association Act as set out in §55-508 et seq., in the Code of Virginia, as amended.

ARTICLE IX

DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved at a duly held meeting at which a quorum is present upon the vote of more than two-thirds (2/3) of the votes, in person or by proxy, of the Class A members and the vote of the Class B member, and with the prior written consent of Lexington Infrastructure Management, L.L.C. for so long as the Communications Agreement remains in effect. Prior to dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for dedication to the locality in which they are situated. In the event that such dedication is refused acceptance upon dissolution, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to similar purposes.

ARTICLE X

NOTICES

All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall either be delivered in person or sent by overnight express courier or by U.S. first class mail, postage prepaid. Notices to the Developer shall be sent to L. M. Sandler & Sons, Inc., 448 Viking Drive, Suite 220, Virginia Beach, Virginia, 23452, Attention: Catherine Holder; with a copy to Elizabeth L. White, Esq., Kaufman & Canoles, 4801 Courthouse Street, Suite 300, Williamsburg, Virginia 23188; or to such other address as the Developer shall specify by executing and recording an amendment to this Declaration, which amendment shall not require the approval of any other parties as provided in Section 8.2. Notices to the Association or to Owners (other than Developer) may be sent to the address which the Bylaws provide shall be used for them. All such notices, demands, requests and other

communications shall be deemed to have been given when sent to the appropriate address specified above. Rejection or other refusal to accept shall not invalidate the effectiveness of any notice, demand, request or other communication. Notwithstanding the foregoing, any notice of the filing of a memorandum of assessment lien shall be sent in the manner required by Section 55-516C of the Virginia Code.

WITNESS the following signatures and seals as of the date first above written.

SANDLER AT BRENNEMAN FARM, L.L.C.
a Virginia limited liability company

By: [Signature] (SEAL)

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Virginia Beach, to wit:

I, Debra A. Dietz, a Notary Public in and for the jurisdiction aforesaid, whose commission expires on the 31st day of August, 2006, do hereby certify that Nathan D. Benson who is either ☒ personally known to me or ☐ who produced as identification, as Manager of Sandler at Brenneman Farm, L.L.C., a Virginia limited liability company, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 23rd day of January, 2006.

Debra A. Dietz
Notary Public

EXHIBIT A

Those certain pieces or parcels of land situate, lying and being in the City of Virginia Beach, Virginia, known and designated as "PARCEL 5A," "PARCEL 5B," "PARCEL 5C" and "PARCEL 5D" as shown on that certain plat entitled, "SUBDIVISION OF LEXINGTON VIRGINIA BEACH, VIRGINIA," made by Rouse-Sirine Associates, Ltd., dated August 9, 2004, revised October 1, 2004 and recorded in the Clerk's Office of the Circuit Court for the City of Virginia Beach, Virginia as Instrument No. 200410190166991.

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